

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

IVÁN NEGRÓN FUENTES, et al.,

Plaintiffs,

v.

UPS SUPPLY CHAIN SOLUTIONS,
et al.,

Defendants.

Civil No. 06-1922 (JAF)

O R D E R

Upon remand from the First Circuit Court of Appeals, we are directed to consider three claims posed by Plaintiffs Negrón, et al., viz. their first claim for damages under article 1802 of the Puerto Rico Civil Code, their sixth claim for detrimental reliance, and their seventh claim for insurance benefits. Docket Nos. 47, 149.

We believe the first claim in tort is preempted under the Employee Retirement Insurance Act of 1979 (ERISA) and relevant case law, and is subject to dismissal, sua sponte, under Federal Rule of Civil Procedure 12(b)(6). We **ORDER** Plaintiffs to show why their first claim under article 1802 of the Puerto Rico Civil Code is not subject to federal preemption **on or before October 31, 2008.**

We **DENY** Plaintiffs' motion for partial summary judgment as to equitable estoppel, Docket No. 106. Any attempt to recover purely under tort on this remaining sixth cause of action would be preempted

Civil No. 06-1922 (JAF)

-2-

1 outright, and recovery under contract may be redundant of available
2 remedy for fiduciary breach or payment of benefits from the insurer.

3 With respect to Plaintiffs' seventh claim against Prudential
4 Insurance Company of America, several triable issues remain. **A Non-**
5 **Jury Trial on the two remaining causes of action shall be held on**
6 **December 8, 2008, at 9:00 A.M. The parties will file a Proposed**
7 **Pretrial Order not later than December 3, 2008.**

8 **IT IS SO ORDERED.**

9 San Juan, Puerto Rico, this 21st day of October, 2008.

10 S/José Antonio Fusté
11 JOSE ANTONIO FUSTE
12 Chief U.S. District Judge